

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 2. If and only if Senate Bill 1930 of the 94th
5 General Assembly becomes law in the form in which it passed the
6 Senate, the Mechanics Lien Act is amended by changing Section
7 21 as follows:

8 (770 ILCS 60/21) (from Ch. 82, par. 21)

9 Sec. 21. Sub-contractor defined; lien of sub-contractor;
10 notice; size of type; service of notice; amount of lien;
11 default by contractor.

12 (a) Subject to the provisions of Section 5, every mechanic,
13 worker or other person who shall furnish any labor, services,
14 material, fixtures, apparatus or machinery, forms or form work
15 for the contractor, or shall furnish any material to be
16 employed in the process of construction as a means for
17 assisting in the erection of the building or improvement in
18 what is commonly termed form or form work where concrete,
19 cement or like material is used in whole or in part, shall be
20 known under this Act as a sub-contractor, and shall have a lien
21 for the value thereof, with interest on such amount from the
22 date the same is due, from the same time, on the same property
23 as provided for the contractor, and, also, as against the
24 creditors and assignees, and personal and legal
25 representatives of the contractor, on the material, fixtures,
26 apparatus or machinery furnished, and on the moneys or other
27 considerations due or to become due from the owner under the
28 original contract.

29 (b) If the legal effect of any contract between the owner
30 and contractor is that no lien or claim may be filed or
31 maintained by any one and the waiver is not prohibited by this
32 Act, or that such contractor's lien shall be subordinated to

1 the interests of any other party, such provision shall be
2 binding; but the only admissible evidence thereof as against a
3 subcontractor or material supplier, shall be proof of actual
4 notice thereof to him or her before his or her contract is
5 entered into. Such ~~waiver or~~ subordination provision shall not
6 be binding on the subcontractor unless set forth in its
7 entirety in writing in the contract between the contractor and
8 subcontractor or material supplier.

9 (c) It shall be the duty of each subcontractor who has
10 furnished, or is furnishing, labor, services, material,
11 fixtures, apparatus or machinery, forms or form work for an
12 existing owner-occupied single family residence, in order to
13 preserve his lien, to notify the occupant either personally or
14 by certified mail, return receipt requested, addressed to the
15 occupant or his agent of the residence within 60 days from his
16 first furnishing labor, services, material, fixtures,
17 apparatus or machinery, forms or form work, that he is
18 supplying labor, services, material, fixtures, apparatus or
19 machinery, forms or form work provided, however, that any
20 notice given after 60 days by the subcontractor shall preserve
21 his lien, but only to the extent that the owner has not been
22 prejudiced by payments made prior to receipt of the notice. The
23 notification shall include a warning to the owner that before
24 any payment is made to the contractor, the owner should receive
25 a waiver of lien executed by each subcontractor who has
26 furnished labor, services, material, fixtures, apparatus or
27 machinery, forms or form work.

28 The notice shall contain the name and address of the
29 subcontractor or material man, the date he started to work or
30 to deliver materials, the type of work done and to be done or
31 the type of materials delivered and to be delivered, and the
32 name of the contractor requesting the work. The notice shall
33 also contain the following warning:

34 "NOTICE TO OWNER

35 The subcontractor providing this notice has performed work
36 for or delivered material to your home improvement contractor.

1 These services or materials are being used in the improvements
2 to your residence and entitle the subcontractor to file a lien
3 against your residence if the services or materials are not
4 paid for by your home improvement contractor. A lien waiver
5 will be provided to your contractor when the subcontractor is
6 paid, and you are urged to request this waiver from your
7 contractor when paying for your home improvements."

8 Such warning shall be in at least 10 point bold face type.
9 For purposes of this Section, notice by certified mail is
10 considered served at the time of its mailing.

11 (d) In no case, except as hereinafter provided, shall the
12 owner be compelled to pay a greater sum for or on account of
13 the completion of such house, building or other improvement
14 than the price or sum stipulated in said original contract or
15 agreement, unless payment be made to the contractor or to his
16 order, in violation of the rights and interests of the persons
17 intended to be benefited by this act: Provided, if it shall
18 appear to the court that the owner and contractor fraudulently,
19 and for the purpose of defrauding sub-contractors fixed an
20 unreasonably low price in their original contract for the
21 erection or repairing of such house, building or other
22 improvement, then the court shall ascertain how much of a
23 difference exists between a fair price for labor, services,
24 material, fixtures, apparatus or machinery, forms or form work
25 used in said house, building or other improvement, and the sum
26 named in said original contract, and said difference shall be
27 considered a part of the contract and be subject to a lien. But
28 where the contractor's statement, made as provided in Section
29 5, shows the amount to be paid to the sub-contractor, or party
30 furnishing material, or the sub-contractor's statement, made
31 pursuant to Section 22, shows the amount to become due for
32 material; or notice is given to the owner, as provided in
33 Sections 24 and 25, and thereafter such sub-contract shall be
34 performed, or material to the value of the amount named in such
35 statements or notice, shall be prepared for use and delivery,
36 or delivered without written protest on the part of the owner

1 previous to such performance or delivery, or preparation for
2 delivery, then, and in any of such cases, such sub-contractor
3 or party furnishing or preparing material, regardless of the
4 price named in the original contract, shall have a lien
5 therefor to the extent of the amount named in such statements
6 or notice. In case of default or abandonment by the contractor,
7 the sub-contractor or party furnishing material, shall have and
8 may enforce his lien to the same extent and in the same manner
9 that the contractor may under conditions that arise as provided
10 for in Section 4 of this Act, and shall have and may exercise
11 the same rights as are therein provided for the contractor.

12 (e) Any provision in a contract, agreement, or
13 understanding, when payment from a contractor to a
14 subcontractor or supplier is conditioned upon receipt of the
15 payment from any other party including a private or public
16 owner, shall not be a defense by the party responsible for
17 payment to a claim brought under Section 21, 22, 23, or 28 of
18 this Act against the party. For the purpose of this Section,
19 "contractor" also includes subcontractor or supplier. The
20 provisions of Public Act 87-1180 shall be construed as
21 declarative of existing law and not as a new enactment.

22 (Source: P.A. 87-361; 87-362; 87-895; 87-1180; 88-45;
23 94SB1930eng.)

24 Section 5. The Tool and Die Lien Act is amended by changing
25 Sections 1, 2, 3, 5, and 6 and by adding Sections 4.1 and 5.1 as
26 follows:

27 (770 ILCS 105/1) (from Ch. 82, par. 351)

28 Sec. 1. Lien.

29 (A) Plastic or metal processors or persons conducting a
30 plastic or metal processing business shall have a lien on the
31 tools, dies, molds, jigs, fixtures, forms or patterns in their
32 possession belonging to a customer, for the balance due them
33 from such customer for plastic or metal processing work, and
34 for all materials related to such work. The processor may

1 retain possession of the tool, die, mold, jig, fixture, form or
2 pattern until such balance is paid, subject only to a security
3 interest properly perfected pursuant to Article 9 of the
4 Uniform Commercial Code.

5 (B) A toolmaker has a lien on all special tools produced by
6 it and on all proceeds from the assignment, sale, transfer,
7 exchange, or other disposition of the special tool produced by
8 it until the toolmaker is paid in full all amounts due the
9 toolmaker for the production of the special tool. For the
10 purpose of this subsection:

11 (1) the lien attaches when the special tool is
12 delivered from the toolmaker to the customer;

13 (2) the amount of the lien is the amount that a
14 customer or processor owes the toolmaker for the
15 fabrication, repair, or modification of the special tool;
16 and

17 (3) the toolmaker retains the lien even if the
18 toolmaker is not a possession of the special tool for which
19 the lien is claimed.

20 (Source: P.A. 85-381.)

21 (770 ILCS 105/2) (from Ch. 82, par. 352)

22 Sec. 2. Definitions. For purposes of this Act:

23 (A) The term "processor" means any individual or entity
24 including, but not limited to, a tool or die maker, who
25 contracted with, or uses a tool, die, mold, jig, fixture, form
26 or pattern to manufacture, assemble, or otherwise make a
27 plastic or metal product or products for a customer.

28 (B) The term "customer" means any individual or entity who
29 contracted with, or caused a plastic or metal processor to use
30 a tool, die, mold, jig, fixture, form or pattern to
31 manufacture, assemble, or otherwise make plastic or metal
32 components or products.

33 (C) The term "special tool" means a tool, die, mold, jig,
34 fixture, form, ~~or~~ pattern, or part used to manufacture,
35 assemble, or otherwise make plastic or metal components or

1 products.

2 (D) The term "toolmaker" means a person including, but not
3 limited to, a mold builder, model maker, patternmaker, molder,
4 die maker, metal former, jig and fixture builder, die sinker,
5 die caster, mold designer, mold programmer, die designer, die
6 programmer, and mold or die engineer, that fabricates, cuts,
7 casts, forms, or designs molds for the plastic industry or dies
8 for the metal forming industry.

9 (Source: P.A. 85-381.)

10 (770 ILCS 105/3) (from Ch. 82, par. 353)

11 Sec. 3. Notice. Before enforcing a ~~such~~ lien as provided
12 for in subsection (A) of Section 1 of this Act, an initial
13 notice in writing shall be given to the customer, either
14 delivered personally or sent by registered mail to the last
15 known address of the customer. This notice shall state that a
16 lien is claimed in the amount therein set forth or thereto
17 attached for processing work contracted or performed for the
18 customer. This notice shall also include a demand for payment.

19 Before enforcing a lien as provided in subsection (B) of
20 Section 1 of this Act, an initial notice in writing shall be
21 given to the customer and processor, either delivered
22 personally or sent by registered mail to the last known address
23 of the customer and the processor. The notice shall state that
24 a lien is claimed in the amount set forth in or attached to the
25 notice for the fabrication, repair, or modification of the
26 special tool. The notice shall also include a demand for
27 payment.

28 (Source: P.A. 85-381.)

29 (770 ILCS 105/4.1 new)

30 Sec. 4.1. Possession of special tool. If the toolmaker has
31 not been paid the amount claimed in the notice within 90 days
32 after the initial notice is received by the customer and by the
33 processor, the toolmaker has a right to possession of the
34 special tool and may do the following:

1 (1) enforce the right to possession of the special tool
2 by judgement, foreclosure, or any available judicial
3 procedure;

4 (2) commence a civil action in circuit court to enforce
5 the lien, including by obtaining a judgment for the amount
6 owed and a judgment permitting the special tool to be sold
7 at an execution sale;

8 (3) take possession of the special tool, if possession
9 without judicial process can be done without breach of the
10 peace; and

11 (4) sell the special tool in a public auction.

12 A toolmaker that suffers damages under this Act may obtain
13 appropriate legal and equitable relief, including damages, in a
14 civil action. The court shall award the toolmaker that is the
15 prevailing party reasonable attorney's fees, court costs, and
16 expenses related to enforcement of the lien.

17 (770 ILCS 105/5) (from Ch. 82, par. 355)

18 Sec. 5. Second notice; publication; sale by processor.

19 (A) Before a processor may sell the die, mold or special
20 tool, the processor shall provide a second written notification
21 to the customer, by registered mail, return receipt requested.
22 The second notice shall include the following information:

23 (1) The processor's intention to sell the die, mold, or
24 special tool;

25 (2) A description of the die, mold, or special tool to be
26 sold;

27 (3) The time and place of the sale; and

28 (4) An itemized statement for the amount due.

29 (B) In addition to this notification by mail, the processor
30 shall publish in a newspaper of general circulation in the
31 place where the die, mold, or special tool is being held for
32 sale by the processor, notice of the processor's intention to
33 sell the die, mold, or special tool. The notice shall include a
34 description of the die, mold, or special tool and name of the
35 customer.

1 (Source: P.A. 85-381.)

2 (770 ILCS 105/5.1 new)

3 Sec. 5.1. Second notice; publication; sale by toolmaker.

4 (A) Before a toolmaker may sell the special tool, the
5 toolmaker shall provide a second written notification to the
6 customer and processor, by registered mail, return receipt
7 requested. The second notice shall include the following
8 information:

9 (1) the toolmaker's intention to sell the special tool;

10 (2) a description of the special tool to be sold;

11 (3) the time and place of the sale; and

12 (4) an itemized statement for the amount due.

13 (B) In addition to this notification by mail, the toolmaker
14 shall publish in a newspaper of general circulation in the
15 place where the special tool is being held for sale by the
16 toolmaker, notice of the toolmaker's intention to sell the
17 special tool. The notice shall include a description of the
18 special tool and name of the customer and processor.

19 (770 ILCS 105/6) (from Ch. 82, par. 356)

20 Sec. 6. Inspection. (A) Prior to the sale of any die, mold
21 or special tool in accordance with this Act, such item must be
22 available for inspection, upon request, by members of the
23 public during normal business hours for a period of at least 2
24 weeks prior to the sale.

25 (B) If the sale is for a sum greater than the amount of the
26 lien, the excess shall be paid to any prior lienholder and any
27 remainder to the customer and the processor.

28 (C) A sale shall not be made or a possession shall not be
29 obtained under this Act if it would be in violation of any
30 right of a customer or a processor under federal patent,
31 bankruptcy, or copyright law.

32 (Source: P.A. 85-381.)